

**LEGISLATIVE SERVICES AGENCY
200 W. Washington St., Ste 302
Indianapolis, Indiana 46204-2789
(317) 232-9861**

**MINUTES OF THE
INDIANA CODE REVISION COMMISSION**

Tuesday, September 22, 1998

10 a.m.

Room 233, State House
Indianapolis, IN 46204

MEMBERS PRESENT: Senator Luke Kenley, Chairman-Elect; Representative Robert Behning; Senator Samuel Smith, Jr.; Professor Emeritus William Harvey; Mr. Greg Ullrich, representing Attorney General Jeff Modisett; Ms. Heather Fesko, representing Secretary of State Sue Ann Gilroy; Mr. Fred Biesecker, Counsel to the Governor; Mr. Dave Remondini, representing Chief Justice Randall T. Shepard; Chief Judge John T. Sharpnack, Indiana Court of Appeals.

MEMBERS ABSENT: Representative Ralph Foley; Representative Robert Kuzman; Representative Jesse Villalpando; Senator Anita Bowser, Senator Sue Landske; Mr. Gene Leeuw, Attorney at Law.

STAFF PRESENT: Mr. John Stieff, Director, Office of Code Revision; Ms. Rebecca Mortell, Deputy Director, Office of Code Revision; Mr. Doug Masson, Deputy Director, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision; Mr. Kevin Kent, Editorial Assistant, Office of Code Revision.

I. CALL TO ORDER

The meeting was called to order at 10:15 a.m. by Senator Kenley. The members of the Commission were then introduced.

II. ELECTION OF CHAIRMAN

Representative Behning nominated Senator Kenley to be the new chairman. The motion was seconded and adopted by consent.

III. INTRODUCTORY REMARKS

Senator Kenley welcomed Senator Smith as a new member of the Commission. Senator Smith was appointed to replace Senator Lonnie Randolph, who resigned from the General Assembly. Senator Kenley gave a brief overview of the Commission.

Mr. John Stieff, Director of the Office of Code Revision of the Legislative Services Agency, gave a brief overview of the work of the Office of Code Revision. He said that the topics for discussion at today's meeting were the proposed technical corrections bill and a proposed change to the Form and Style Manual for Legislative Measures. He anticipated that today's meeting would be the only meeting needed this year.

Senator Kenley asked staff why the Office of Code Revision was discontinuing its work on recodifications. Mr. Stieff responded that the Legislative Council had put a hold on future recodifications.

When asked why, Mr. Stieff explained that the Legislative Council did not want to do a recodification this year because the Office of Code Revision was involved with the republishing of the entire Indiana Code. He stated that over the years the Commission had reviewed recodification projects for Title 9 (motor vehicles), Title 12 (human services), Title 13 (environment), Title 14 (natural and cultural resources), Title 16 (health), Title 31 (family law and juvenile law), and Title 34 (civil law and procedure). Senator Kenley stated that he would pursue the reason for the discontinuance of future recodifications with the Legislative Council.

IV. REVIEW OF MINUTES

The Commission approved by consent the minutes of the Commission's last meeting on October 29, 1997 meeting.

V. PROPOSED TECHNICAL CORRECTIONS BILL

Mr. Doug Masson, Deputy Director, Office of Code Revision, reviewed the contents of Preliminary Draft 3239, the proposed technical corrections bill, which is attached to the minutes as Appendix A. He distributed a section-by-section summary, which is attached to the minutes as Appendix B.

Mr. Masson, using examples in the draft, described the following types of problems addressed by the proposed technical corrections bill:

1. Outdated citations.
2. Expired sections.
3. Language style problems.
4. References to groups by inconsistent names.
5. Citation mistakes.
6. Spelling errors.
7. Ambiguous language.
8. Printer errors.
9. Conflicts in the law resulting from two or more acts amending the same section of the Indiana Code without recognizing each other.
10. Amendments made to sections of the Code that were repealed by the recodification bill.

The Commission members had comments or questions about amendments to the following provisions in PD 3239:

SECTION 8 (IC 6-1.1-24-1.2): Mr. Masson explained that this correction eliminates an ambiguity created by the use of population parameters intended to designate the City of East Chicago. Mr. Biesecker inquired about the population parameters used. Staff was asked to double check the population parameters of all the applicable cities.

SECTION 18 (IC 7.1-2-2-13): Mr. Masson explained the need for the change in response to questioning by Senator Kenley. Mr. Masson stated that the provision was being moved to a more appropriate location in the Indiana Code. Senator Kenley asked for assurances that the language being moved was identical to the language passed. Mr. Stieff said he would ask staff to verify that no language was being changed.

SECTION 50 (22-2-2-4): Senator Kenley asked if our office had a standard way of referring and updating references to federal law, specifically with respect to the proposed language on page 33, line 3 of the proposed draft. Mr. Stieff stated that staff would take a look at the language and report back to the Chairman.

SECTION 66 (IC 34-18-3-5): Senator Kenley inquired about the distinction between "complies with" and "is in compliance with". He expressed concern about interchanging the two phrases. He stated the former is an active verb and the latter concerns status. He expressed his desire that all the drafters be made aware of the distinction. Mr. Stieff said he would advise the drafters. Mr. Masson explained that, in this instance, he had chosen "is in compliance" because that was the phrase used in current law.

SECTION 70 (IC 34-30-12-1): Mr. Masson explained that the proposed change places the language of SEA 171(P.L.24-1998), SECTION 2, into the proper section of the recodified Title 34. SEA 171, as passed, did not recognize the recodification bill and amended IC 34-4-12-1.5, which was being repealed and recodified at a new location in the Code by the recodification bill. This particular change was the subject of a Joint Rule 20 motion on the final day of the 1998 session that was adopted by the House but was not acted upon by the Senate. Mr. Stieff briefly explained the Joint Rule 20 process.

SECTION 71 (34-30-5-14): Senator Kenley inquired about the proposed change. Ms. Mortell explained that in preparing the recodification bill for introduction, macros are run on the document to clean up the citations but sometimes more is deleted than is supposed to be. She speculated that this may have been what happened in this instance. Senator Kenley asked staff to verify that the citation language being added is correct.

Mr. Masson also distributed and explained a proposed amendment to PD 3239, which included changes brought to his attention after PD 3239 was mailed out. (The amendment is attached to the minutes as Appendix C.)

Ms. Becky Mortell, Deputy Director, Office of Code Revision, explained the proposed repeal of IC 33-5.1-4 in the technical corrections bill. She reported that in 1995, the General Assembly passed P.L.16-1995, which combined the Marion County superior courts and municipal courts under a unified superior court. The bill repealed the existing statutes at the time concerning the existing superior and municipal courts. However, the 1995 unified court bill failed to repeal IC 34-1-69 governing municipal court commissioners. Ms. Mortell confirmed with the author of P.L. 16-1995 and the drafters of the language in P.L.16-1995 that the failure to repeal IC 34-1-69 at that time was an oversight. Ms. Mortell pointed out that the new Marion County court law established new provisions to govern the superior court commissioners, under which the commissioners were given sentencing powers. The former law that was mistakenly left on the books (IC 34-1-69) specifically prohibited municipal court commissioners from sentencing.

Ms. Mortell reported that P.L.1-1998, which recodified Title 34, compounded the problem. Before P.L.1-1998 was enacted, the fact that IC 34-1-69 erroneously remained on the books did not cause any problems because IC 34-1-69 applied to "municipal courts" and there are no longer municipal courts in Marion County. However, when IC 34 was recodified in 1998, LSA staff (not aware of the fact that IC 34-1-69 had been superfluous since 1995) recommended to the Code Revision Commission that IC 34-1-69 be moved to IC 33. When LSA moved the superfluous chapter to IC 33, it made the chapter applicable to Marion superior courts. This recommendation was in error; the LSA staff recommendation should have been to repeal IC 34-1-69. Ms. Mortell pointed out that the Title 34 recodification did contain a savings clause, which said in effect that if any change made by a recodification resulted in a substantive change in the law, a court should construe the law as it was in effect before the recodification. She added that the savings clause has not been tested in court however. The Commission approved the proposed repeal of IC 33-51-4 in the technical corrections bill.

The Commission voted by consent to recommend to the General Assembly PD 3239, as amended by the Commission. Mr. Stieff asked the Commission for permission to insert into the digest of the technical corrections bill that the draft was prepared by the Code Revision Commission. The Commission approved by consent the insertion of that statement in the digest. It was further decided that Senator Kenley would author the bill and Senator Smith would be second author on the bill.

VI. OTHER BUSINESS

Mr. Stieff explained a proposed change to the Form and Style Manual for Legislative Measures, which is attached to the minutes as Appendix D. The proposal would insert in the drafting manual the following language:

"Sec.____. The affirmative votes of a majority of the voting members appointed to the [committee][commission] are required for the [committee][commission] to take action on any measure, including final reports."

In response to questioning by Senator Kenley, Mr. Stieff stated that this was a change requested by the Legislative Council. Senator Kenley asked for a copy of the drafting manual.

Senator Smith made a motion to recommend to the Legislative Council that the proposed language be incorporated into the drafting manual. The motion was seconded. The Commission approved the recommended change by consent.

VII. ADJOURNMENT

The Chairman thanked the Commission members and staff for their work on the Commission. The meeting was then adjourned by the Chairman at 11:20 a.m.

Attachments